IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 6881 of 1989

with

SPECIAL CIVIL APPLICATION No 2116 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment/Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment/Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PRADEEP P MEHTA

VERSUS

SECRETARY, MANAGEMENT COMMITTEE, E.P.F. STAFF CANTEEN

Appearance:

1. Special Civil Application No 6881 of 1989

MR CN TRIVEDI for the Petitioners

None present for the Respondents

2. Special Civil Application No 2116 of 1997

MR MAHENDRA K PATEL for the Petitioners

None present for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 26/11/1999

C.A.V. JUDGMENT

1. As in both these special civil applications, the points raised are common the same are taken up for hearing together on the request of the counsel for the petitioners and are being disposed of by this common judgment. Otherwise also, from para-16 of the special civil application No.2116/97, the petitioners therein prayed that this petition may be heard along with the special civil application No. 6881 of 1989.

2. During the course of arguments, learned counsel for the petitioners admit that the services of the petitioners in both these cases have already been dispensed with by the respondents. In para-11 though the petitioners have not very specifically stated the date on which their services were terminated but if we go by the facts stated therein I find that their services were terminated in all the eventualities much before 1989. Para-11 reads as under:

> 11. The petitioners respectfully submit that, other four employees of canteen at relevant point of time had appraoched this Hon'ble Court and this Hon'ble Court had given interim order not to terminate, but unfortunately before order was served to respondent authority, they were termnated by oral instruction given by respondent authority not to come from tomorrow. Thereafter, these present petitoenrs had engaged one advocate in 1991. He had prepared draft memo for filing Civil Application to join as party as petitioner in main SCA No. 6881/89 and affidavit was also signed. But unfortunately that Civil Appliation had not been filed and this fact came to their notice recently. Therefore, C.A. No. 10516/96 was filled and withdrawn to file fresh Special Civil Application. Therefore, this another very similar petition is filed.

3. In the special civil application No. 6881 of 1989, I find that the services of the petitioners were also terminated on 8-1-1991. This special civil application is amended but they have not challenged the order of termination or action of the respondents to terminate orally their services. In the special civil application, no prayer has been made for quashing and

setting aside of the alleged oral order of termination of services of the petitioners. In special civil application No.2116 of 1987, the petitioners though filed this petition on 27th July, 1997 after about more than six years of termination of their services, they have not challenged the action of the respondents to terminate their services nor any prayer has been made for quashing and setting aside that order or action or oral termination of their services. It is a case where the petitioners who were at one point of time working in the E.P.F Staff Cooperative Canteen and by these special civil applications they are praying for direction to the respondents to give them the benefit of the regular salary and allowances and other attendant benefits with arrears as per the circulars issued by the Government at Annexures `B', `C', `D' and `E'. The question of grant of these benefits to the petitioners could have arisen only when they would have been in services. The services of the petitioners were brought to an end long back and these petitions as such are not maintainable. The benefits of this nature can only be granted where if ultimately the court considers the action of the respondents to terminate their services to be invalid and give the direction for their reinstatement but as stated earlier in the special civil applications no such prayers have been made nor the order of respondents to terminate their services have been challenged. The learned counsel for the petitioners during the course of arguments has also not made any contention how the termination of the services of the petitioners is illegal. The petitioners were appointed if we go by the facts of this case on daily wages or consolidated salary. It is not the case of the petitioners also that their appointments were made after regular selection. The petitioners in both these petitions as stated earlier have restricted their claim only for the benefits under the circular but they have not made out any ground to challenge the termination of their services. In the absence of any ground much less a prayer for quashing and setting aside the action of the respondents to terminate their services, the relief as prayed for in these petitions cannot be granted. In special civil application No. 2661/97, the petitioners have filed this petition after more than six years of termination of their services. In the absence of any grounds of challenge and the prayer for settng aside the order of termination of their services, the writ petition framed as such does not survive and the reliefs as prayed for can not be granted. If any reference is required then reference may have to the decision of the Apex Court in the case of H.P. Housing Board vs. Om

Pal reported in 1997 (1) SCC 269.

4. On merits also, I do not find any case in favour of the petitioners. The petitioners have failed to establish on the record of these special civil applications that the canteen which was there in the office of the respondent was a statutory canteen. Even otherwise the statutory canteen is there, relation of workmen working therein with the establishment managing such canteen ipso facto is not that of `employer' and `employee'. They may be taken to be workmen of the establishment for the purpose of Factories Act and not ipso facto workmen for other purposes like recruitment, seniority, promotion, retiral benefits etc.. The question where the workmen of the statutory canteen of the establishment concerned could be held to be workmen of the establishment for all the purposes is a question of fact and the heavy burden lies on the petitioners to discharge the same which in this case they have failed to discharged. The canteen was managed by the Cooperative society of the employees and in the absence of any material on the record otherwise also it is difficult to accept that the workmen working therein can be taken to be workmen of the establishment for all the purposes. Reference here may have to the latest pronouncement of the Apex Court in the case of Indian Petrochemicals Corporation Ltd. vs. Shramik Sena & Ors. reported in 1999 (6) SCC 439.

5. In the result, both these special civil applications fail and the same are dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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zgs/-